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DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 8401 of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2016 under the waiver authority in section 8401 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act.¹

The ESEA requires that the Department publish in the *Federal Register*, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or

¹ On December 10, 2015, the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), was signed into law. The ESEA waiver provisions in section 8401 of the ESEA, as amended by the ESSA, went into effect on that date. However, the Department awarded and administered FY 2016 formula grant funds in accordance with the ESEA as in effect on the day before the date of enactment of the ESSA (i.e., the requirements promulgated under the No Child Left Behind Act of 2001 (NCLB)) consistent with clarification from Congress in the Consolidated Appropriations Act, 2016. Accordingly, unless otherwise noted, all references to the ESEA in this notice refer to the ESEA, as amended by NCLB.

regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during each calendar year.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W341, Washington, DC 20202. Telephone: (202) 260-2221 or by email:

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If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: In 2016, the Department granted a total of 111 waivers to States under the waiver authority in section 8401 of the ESEA, as amended by the ESSA. We granted:

(a) 73 waivers extending the period in which funds were available for obligation: 66 waivers for school improvement activities, one waiver for Improving Teacher Quality, one waiver for Migrant Education, three waivers for 21st Century Community Learning Centers (21st CCLC), and two waivers for Mathematics and Science Partnerships;

(b) 32 waivers of requirements related to State academic standards or assessments: six waivers allowing substitution of

standards or assessments and six waivers permitting SEAs or LEAs to refrain from reporting assessment or accountability determinations; and 26 waivers of the requirement that a State's assessment system cover the full range of its academic content standards for speaking and listening;

(c) One waiver permitting an LEA to serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school;

(d) One waiver permitting local educational agencies (LEAs) to operate a Title I schoolwide program in a priority school or a focus school that has less than 40 percent poverty and is implementing a schoolwide intervention; and

(e) Four waivers allowing an SEA to waive the carryover limitation for an LEA that needs an additional waiver beyond what the SEA is authorized to grant.

Waiver Data

I. Extensions of the Obligation Period

A. *Sixty-six waivers to extend the period of availability of School Improvement Grant (SIG) funds.*

1. Extended the period of availability of fiscal year (FY) 2011 SIG funds awarded to two States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

Waiver Applicants:

- New York State Education Department
- Wisconsin Department of Education

2. Extended the period of availability of FY 2012 SIG funds awarded to three States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Missouri Department of Elementary and Secondary Education

- New Jersey Department of Education
- Texas Education Agency

3. Extended the period of availability of FY 2013 SIG funds awarded to seven States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Iowa Department of Education
- Missouri Department of Elementary and Secondary Education
- Oregon Department of Education

- Puerto Rico Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Wisconsin Department of Education

4. Extended the period of availability of FY 2014 SIG funds awarded to eight States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Alabama State Department of Education
- Arizona Department of Education
- Georgia Department of Education
- Iowa Department of Education
- Kansas State Department of Education
- New Hampshire Department of Education
- North Dakota Department of Public Instruction
- Puerto Rico Department of Education

5. Extended the period of availability of FY 2016 SIG funds awarded to 46 States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Alabama State Department of Education

- Alaska Department of Education and Early Development
- Arizona Department of Education
- Arkansas Department of Education
- California Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- District of Columbia Office of the State Superintendent

of Education

- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Iowa Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary

Education

- Michigan Department of Education
- Minnesota Department of Education

- Mississippi Department of Education
- Missouri Department of Elementary and Secondary

Education

- Montana Office of Public Instruction
- Nebraska Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- North Dakota Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education

- Washington Office of the Superintendent of Public Instruction

- Wisconsin Department of Education

B. One waiver to extend the period of availability of funds for Improving Teacher Quality awarded under Title II, Part A of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- New York State Department of Education

C. One waiver to extend the period of availability of funds for Migrant Education related activities awarded under section Title I, Part C of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- New York State Department of Education

D. Three waivers extending the period of availability of funds for the 21st CCLC program under Title IV, Part B of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

1. Extended the period of availability of FY 2012 funds reserved under Title IV, Part B of the ESEA made available for the 21st CCLC program.

Waiver Applicant:

- North Dakota Department of Public Instruction

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

2. Extended the period of availability of FY 2013 funds reserved under Title IV, Part B of the ESEA made available for the 21st CCLC program.

Waiver Applicants:

- Hawaii State Department of Education
- Maryland State Department of Education

F. Two waivers to extend the period of availability of Mathematics and Science Partnerships funds.

1. Extended the period of availability of FY 2012 funds awarded to one State under Title II, Part B of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- Illinois State Board of Education

2. Extended the period of availability of FY 2013 funds awarded to one State under Title II, Part B of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- Illinois State Board of Education

III. Waivers of Requirements Related to State Academic Standards and Assessments

A. One waiver allowing substitution of standards or assessments.

Provisions waived: Section 1111(b)(1)(B) and (3)(C)(i) of the ESEA.

Waiver Applicant:

- Hawaii State Department of Education

Description of Waiver: One-year waiver for the 2015-2016 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA, which require the State to apply the same academic achievement standards, and to use the same academic assessments, for all public school children in the State.

B. Three waivers of the requirement for an SEA to administer high-quality student academic assessments.

Provisions waived: Section 1111(b)(3)(A), (b)(3)(C)(vii), and (b)(3)(C)(ix)(I) of the ESEA.

Waiver Applicants:

- Alaska Department of Education and Early Development

- Montana Office of Public Instruction
- Nevada Department of Education

Description of Waiver: Waiver of the requirement that the SEA administer on an annual basis a set of high-quality student academic assessments in reading/language arts and mathematics to all students in grades three to eight and once in high school.

C. One waiver of reporting requirements related to standards and assessments.

Provisions waived: Section 1111(h) (1) (C) (i), (1) (C) (iii)-(iv), and (2) (B) of the ESEA.

Waiver Applicant:

- Alaska Department of Education and Early Development

Description of Waiver: Waiver for the 2015-2016 school year of the SEA and LEA reporting requirements in the ESEA corresponding to the waived assessment requirements.

D. Twenty-six waivers allowing States to have assessments that did not assess all content standards.

Provision waived: Section 1111(b) (3) (C) (ii) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arkansas Department of Education
- California Department of Education

- Georgia Department of Education
- Idaho State Board of Education
- Iowa Department of Education
- Indiana Department of Education
- Kentucky Department of Education
- Kansas State Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Massachusetts Department of Elementary and Secondary

Education

- Missouri Department of Elementary and Secondary

Education

- Montana Office of Public Instruction
- Nevada Department of Education
- New York State Department of Education
- North Dakota Department of Public Instruction
- Puerto Rico Department of Education
- South Carolina Department of Education
- Texas Education Agency
- Virginia Department of Education
- Washington Office of the Superintendent of Public

Instruction

- West Virginia Department of Education

- Wisconsin Department of Education
- Wyoming Department Education

Description of Waiver: Waiver from the requirement that the State's assessment system measure the State's speaking and listening standards.

IV. Within-District Allocations

One waiver granting flexibility regarding within-district Title I allocations.

Waiver Applicant:

- New York State Department of Education

Description of Waiver: Permitted an LEA to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school does not rank sufficiently high to be served based solely on the school's poverty rate.

Provisions waived: Section 1113(a)(4)(B) and (c)(1) of the ESEA.

V. School-wide Poverty Threshold

One waiver allowing a Title I schoolwide program in a school below the 40 percent poverty threshold.

Provision waived: Section 1114(a)(1) of the ESEA.

Waiver Applicant:

- Missouri Department of Elementary and Secondary Education

Description of Waiver: Waiver permitting LEAs to operate a schoolwide program in a priority school or a focus school that does not meet the schoolwide poverty threshold of 40 percent and is implementing a schoolwide intervention.

VI. Authorizing an SEA to Waive the Carryover Limitation

A. Four waivers authorizing SEAs to waive the carryover limitation for an LEA more than once every three years.

Provision waived: Section 1127(b) of the ESEA.

Waiver Applicant:

- Indiana Department of Education

Description of Waiver: One-year waiver to allow Indiana to grant the Indianapolis Public Schools, Edison Learning - Roosevelt College and Career Academy, and Dr. Robert H. Faulkner Academy a waiver of the carryover limitation with respect to the FY 2015 Title I, Part A funds even if the LEA received a carryover waiver of either its FY 2013 or FY 2014 Title I, Part A funds from the State.

Waiver Applicant:

- Michigan Department of Education

Description of Waiver: One-year waiver allowed Michigan to grant the School District of the City of Pontiac and Saginaw

City School District a waiver of the carryover limitation with respect to FY 2014 Title I, Part A funds even if the LEA received a carryover waiver of either its FY 2012 or FY 2013 Title I, Part A funds from the State.

Waiver Applicant:

- Washington Office of the Superintendent of Public Instruction

Description of Waiver: One-year waiver allowed Washington to grant not more than 90 LEAs a waiver of the carryover limitation with respect to unexpended FY 2015 Title I, Part A funds even if an LEA received a carryover waiver of either its FY 2013 or FY 2014 Title I, Part A funds from the State.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. Free internet access to the official edition of the *Federal Register* and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Dated: October 3, 2017.

Jason Botel,
Acting Assistant Secretary for
Elementary and Secondary Education.

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